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the costs of the action, including reasonable attorney's fees, but that the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Secretary, the Attorney General of the United States, and the recipient;

(iv) The notice shall contain the alleged violation of the Act, the relief requested, the court in which the complainant is bringing the action, and whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring an action if the same alleged violation of the Act by the same recipient is the subject of a pending action in any court of the United States.

## PART 21—ADMINISTRATIVE OFFSET

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AUTHORITY: 31 U.S.C. 3716; 4 CFR Part 102.

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### § 21.1 Definitions.

For purposes of this subpart:

(a) The term *administrative offset* means satisfying a debt by withholding

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of money payable by the Department to, or held by the Department on behalf of a person, to satisfy a debt owed the Federal Government by that person.

(b) The term *person* includes individuals, businesses, organizations and other entities, but does not include any agency of the United States, or any State or local government.

(c) The terms *claim* and *debt* are deemed synonymous and interchangeable. They refer to an amount of money or property which has been determined by an appropriate agency official to be owed to the United States from any person, organization, or entity, except another Federal agency, a State or local government, or Indian Tribal Government.

(d) *Agency* means:

(1) An Executive department, military department, Government corporation, or independent establishment as defined in 5 U.S.C. 101, 102, 103, or 104, respectively.

(2) The United States Postal Service; or

(3) The Postal Rate Commission.

(e) *Debtor* means the same as "person."

(f) *Department* means the Department of Commerce.

(g) *Secretary* means the Secretary of the Department of Commerce.

(h) *Assistant Secretary for Administration* means the Assistant Secretary for Administration of the Department of Commerce.

(i) *United States* includes an "agency" of the United States.

(j) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by a person to the United States.

(k) *Departmental unit* means an individual operating or administrative component within the Department of Commerce.

(l) *Departmental unit head* means the head of an individual operating or administrative component within the Department of Commerce responsible for debt collection.

(m) *Notice of Intent* means a demand notice sent by the Department to the debtor indicating not only the amount due, but also the Department's intent to offset all or some of the amount due

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from other source(s) of Federal payment(s) that may be due the debtor.

(n) *Workout group* means Departmental debt collection specialist(s) assigned to collection of a delinquent debt when the claim is 30 or more days past due.

### § 21.2 Purpose and scope.

(a) The regulations in this subpart establish procedures to implement section 10 of the Debt Collection Act of 1982 (Pub. L. 97-365), 31 U.S.C. 3716. Among other things, this statute authorizes the heads of each agency to collect a claim arising under an agency program by means of administrative offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts.

(b) Unless otherwise provided for by statute, these regulations do not apply to an agency of the United States, a State government, or unit of general local government. In addition, these procedures do not apply to debts arising under the Internal Revenue Code (26 U.S.C. 1-9602), the Social Security Act (42 U.S.C. 301-1397f), the tariff laws of the United States; or to contracts covered by the Contract Dispute Act of 1978 (41 U.S.C. 601-613).

(c) The regulations cover debts owed to the United States from any person, organization or entity, including debts owed by current and former Department employee, or other Federal employees, while employed in one capacity or another by the Department of Commerce.

(d) Debts or payments which are not subject to administrative offset under 31 U.S.C. 3716, unless otherwise provided for by contract or law, may be collected by administrative offset under the common law or other applicable statutory authority.

(e) Departmental unit head (and designees) will use administrative offset to collect delinquent claims which are certain in amount in every instance

and which collection is determined to be feasible and not prohibited by law.

### § 21.3 Department responsibilities.

(a) Each Departmental unit which has delinquent debts owed under its program is responsible for collecting its claims by means of administrative offset when appropriate and best suited to further and protect all the Government's interests.

(b) The Departmental unit head (or designee) will determine the feasibility and cost effectiveness of collection by administrative offset on a case-by-case basis, exercising sound discretion in pursuing such offsets, and will consider the following:

- (1) The debtor's financial condition;
- (2) Whether offset would substantially interfere with or defeat the purposes of the Federal program authorizing the payments against which offset is contemplated; and
- (3) Whether offset best serves to further and protect all of the interests of the United States.

(c) Before advising the debtor that the delinquent debt will be subject to administrative offset, the Departmental unit workout group shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Commerce units, or in such other instances as the Assistant Secretary for Administration or his/her designee may deem appropriate, the Assistant Secretary, or his or her designee, may determine which Departmental unit workout group or official(s) shall have responsibility for carrying out the provisions of this subpart.

(d) Administrative offset shall be considered by Department units only after attempting to collect a claim under section 3(a) of the Federal Claims Collection Act of 1966, as amended; except that no claim under this Act that has been outstanding for more than 10 years after the debt first accrued may be collected by means of administrative offset, unless facts, material to the right to collect the debt, were not known and could not reasonably have been known by the official of the Department who was charged with